IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

KATHLEEN PARKS,	)	
Plaintiff,	)	
v.	)	No. 03-2326-D
FINANCIAL FEDERAL SAVINGS BANK,	)	
Defendant.	)	

ORDER DENYING DEFENDANT'S MOTION TO RECONSIDER

Before the Court is Defendant's motion for reconsideration of this Court's Order Granting in Part and Denying in Part Defendant's Motion for Summary Judgment ("Order"), entered November 30, 2004. For the following reasons, Defendant's motion for reconsideration is denied.

Defendant asserts that the Court's denial of its motion for summary judgment with respect to Plaintiff's claim of violations of the Employee Retirement Income Security Act ("ERISA") should be reconsidered. In support of the motion for reconsideration, Defendant offers an affidavit of John Shelton, president of Plaintiff's former employer, the Physician's Postgraduate Press ("PPP"). In the affidavit, Mr. Shelton declares that he would not have rehired Plaintiff, as Plaintiff contended in her affidavit as part of her response to Defendant's motion for summary judgment. Plaintiff used that contention to show that she relied on Defendant's assurance that insurance would begin immediately. Defendant argues that because of Mr. Shelton's affidavit, Plaintiff could not establish reliance.

A motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e) may be made for one of three reasons:

1) An intervening change of controlling law;
2) Evidence not previously available has become available; or
3) It is necessary to correct a clear error of law or prevent manifest injustice.

Fed. R. Civ. P. 59(e); Helton v. ACS Group and J&S Cafeterias of Pigeon Forge, Inc., 964 F. Supp. 1175 (E.D. Tenn. 1997). Rule 59 is not intended to be used to "relitigate issues previously considered" or to "submit evidence which in the exercise of reasonable diligence, could have been submitted before." Id. at 1182. Thus, there are limited circumstances in which a Court may grant a motion to alter or amend a judgment.

Although Defendant's argument was not previously made in its summary judgment motion, the new argument is simply a reply to Plaintiff's arguments in response to Defendant's summary judgment motion. Because the evidence offered by the Defendant was available prior to the Court's Order, the proper time to have presented that argument would have been in its reply brief prior to the Court's ruling. Additionally, the Court finds that the Defendant does not offer evidence of an intervening change of controlling law. The Court finds, therefore, that no manifest injustice exists which would warrant the Court to alter or amend its Order Granting in Part and Denying in Part Defendant's Motion for Summary Judgment. Accordingly, Defendant's motion to reconsider is **DENIED**.[1]

IT IS SO ORDERED this _____ day of January, 2005.

_____
BERNICE BOUIE DONALD
UNITED STATES DISTRICT COURT

[1] Even if the Court considered the Defendant's new information, that information would not warrant reconsideration of the Order. On Plaintiff's first day of work, she met with Defendant's representative, Ms. Yount, and declared unequivocally that her insurance would need to take effect right away. Ms. Yount stated at that time that she would change Plaintiff's start date so that insurance would begin immediately. Plaintiff relied on that information when she remained employed by Defendant. There is no way that the Court can speculate about what Plaintiff might have done if Defendant refused to insure her immediately, but by stating that she must be immediately insured, Plaintiff made it clear that waiting for insurance was not an option.